

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

DONALD DEGUTZ et al,

Plaintiff and Appellant,

v.

RENE G. BOISVERT et al.,

Defendants and Appellants;

LARS LOHAN, dba CALIFORNIA
TRACE & RECOVERY,

Claimant and Respondent.

A152443

(Alameda County Super. Ct.
No. RG08372963)

Defendant Rene G. Boisvert seeks reversal of the trial court's 2017 post-judgment order granting Lars Lohan, to whom plaintiff Donald DeGutz assigned his interest in the judgment in this case, the power of sale on a deed of trust. Boisvert contends Lohan's purported lack of compliance with a 2014 post-judgment order in the same case requires reversal. Boisvert also argues that Lohan is not allowed to appear in this court to represent the interest of DeGutz because such an appearance is prohibited in federal court. We reject Boisvert's appellate claims and affirm the trial court's order.

BACKGROUND

This is Boisvert's third appeal in the same case. We recounted some of the events of the underlying lawsuit in one of our previous unpublished opinions, *DeGutz v. Boisvert*, No. A141166, issued on August 26, 2016, a copy of which is contained in the record. As we stated in that opinion, in 2008, DeGutz sued Boisvert and related entities

in a dispute over a real estate transaction. After a bench trial, the court issued a judgment in favor of DeGutz on his breach of contract, breach of fiduciary duty and fraud claims, and awarded him \$161,732.56. Boisvert appealed to this court. We affirmed the judgment and issued a remittitur in April 2013.

In 2011, DeGutz assigned his interest in the judgment to Lohan. In September 2012, the superior court granted Lohan's motion for a charging order¹ regarding Boisvert's distributive interest in two limited liability companies, including 800 Center, LLC.

In June 2013, the superior court granted Lohan's application for an order compelling Boisvert to appear for examination on behalf of 800 Center, LLC. In September 2013, after examining Boisvert, Lohan filed a motion seeking relief under the Enforcement of Judgments Law. Lohan contended Boisvert then owed \$283,378.10 on the judgment and, as the sole member of 800 Center, LLC, had triggered a distribution to himself that was subject to the charging order by filing a certificate of dissolution with the California Secretary of State. Lohan asked the court to assign to him certain 800 Center, LLC assets—a \$240,000 deed of trust and underlying security in certain real property in Oakland, California (property)—to the extent necessary to satisfy the judgment.

On January 21, 2014, the superior court filed an order, corrected and amended from a previous order, granting Lohan's relief motion (2014 order). Among other things, the court found, "Based on the evidence presented, including statements made by Boisvert in open court and during an order of examination, which included apparently false statements that he had no knowledge of the functioning of 800 Center, LLC and that he had no documents of 800 Center, LLC, as well as multiple statements that 800 Center,

¹ Lohan's motion for a charging order is not in the record before us. Generally, "[i]f a money judgment is rendered against a partner or member but not against the partnership or limited liability company, the judgment debtor's interest in the partnership or limited liability company may be applied toward the satisfaction of the judgment by an order charging the judgment debtor's interest pursuant to Section 15907.3, 16504, or 17705.03 of the Corporations Code." (Code Civ. Proc., § 708.310.)

LLC, had been dissolved, when that evidently was not the case, it appears that 800 Center, LLC's interest in the Deed of Trust and the Memorandum of Option [to certain real property] became a distributive interest to Boisvert as of the dissolution of 800 Center, LLC, subject to Lohan's charging order lien, effective July 31, 2012. To the extent that a determination of the rights and interests of 800 Center, LLC and Boisvert in [the real property] are difficult to ascertain, it is because Boisvert has ordered the affairs at issue and presented them in a manner intentionally intended to be opaque and difficult to determine."

The court also ordered that Boisvert's recent conveyance under the subject deed of trust was subordinate to Lohan's motion, and that all beneficial interest and right to payments arising out of the assets Lohan sought were assigned to him to the extent necessary to satisfy the judgment.

Most pertinent to this appeal, the court further ordered, "If Boisvert fails to satisfy the indebtedness under the Deed of Trust within 60 days of the date of this order, Lohan may apply to this court for authorization to exercise further rights as an assignee under the law, including the power of sale under the Deed of Trust subject to senior interests in the property. Such an application shall set out the ownership of record of the property and explain the expected effect of any such action on any parties other than Boisvert or 800 Center LLC. Any funds Lohan receives through the rights of the Deed of Trust shall be applied to the outstanding balance on the judgment as provided by law."

Three years later, in April 2017, Lohan filed a motion for an order granting him the power of sale of the assigned deed of trust for the property. In his supporting papers, he estimated Boisvert then owed him was over \$358,000 on the judgment, asserted Boisvert had not paid on the deed of trust and that the assignment of the deed of trust to him was ripe for enforcement. He submitted to the court a copy of an unauthenticated "Condition of Title Guarantee" showing all parties in interest as to the property. He stated, "The Title Guarantee shows senior deeds of trust encumbering the property in the original amounts of \$320,000.00, \$350,000.00 and \$100,000.00, respectively, totaling \$770,000.00. Even if these senior encumbrances have not been paid down at all since

their underlying obligations were originally incurred—Lohan reasonable believes that at least one of these obligations, the junior \$100,000.00 note, has been substantially paid off and the other two senior obligations have been substantially paid down due to the passage of time—the subject property is believed to have a current market value of at least \$950,000.00. Accordingly, Lohan expects to receive a substantial payment towards satisfaction of the judgment entered in this case through foreclosure of the subject assigned deed of trust.”

Boisvert opposed Lohan’s motion for power of sale on multiple grounds. These included his contention that Lohan’s motion did not “set out the ownership of record” of the property nor “explain the expected effect” of the motion on parties other than Boisvert or 800 Center LLC, although the court in its 2014 order ordered that Lohan do so in any application for authorization to exercise further rights as an assignee under the law, including the power of sale under the deed of trust subject to senior interests in the property.

The court reviewed the parties’ papers and held a hearing on Lohan’s motion for power of sale. In August 2017, it issued a written order. It granted Lohan’s motion and ordered that he could proceed to exercise the power of sale against the property and apply the net proceeds from the property’s sale towards satisfaction of the judgment.

Boisvert filed a notice of appeal on August 31, 2017. He filed an opening brief, after Lohan had moved to dismiss his appeal, including because of a purported insufficiency in the notice of appeal. We denied Lohan’s motion. Lohan did not file a respondent’s brief, and Boisvert did not file a reply brief.

We also during the pendency of this appeal granted Lohan’s request that we take judicial notice of, among other things, the Alameda County Superior Court’s May 17, 2018 order in another case declaring that Boisvert was a vexatious litigant pursuant to Code of Civil Procedure section 391 at Lohan’s request.

DISCUSSION

I.

General Guidelines Regarding the Parties' Arguments

Before we review Boisvert's arguments, we note that he appears in propria persona. As we pointed out in our previous opinion, "[w]hen a litigant is appearing in propria persona, he is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]. Further, the in propria persona litigant is held to the same restrictive rules of procedure as an attorney [citation]." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638–639, followed in *County of Orange v. Smith* (2005) 132 Cal.App.4th 1434, 1444.) Further, an " 'order of the lower court is *presumed correct*. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown.' " (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) Appellant has the burden of affirmatively showing any error. (*Lennane v. Franchise Tax Bd.* (1996) 51 Cal.App.4th 1180, 1189.)

II.

Boisvert's Appellate Claims

Boisvert makes two appellate claims, both of which we reject.

First, Boisvert claims we must reverse the court's 2017 order because Lohan in his motion for power of sale did not comply with the court's 2014 order that, in applying for such power, he "set out the ownership of record of the property" and "explain the expected effect" on parties other than Boisvert or 800 Center LLC.

We need not discuss whether or not Lohan provided this information because Boisvert fails to address a determinative legal question. That is, assuming for the sake of argument that Lohan did not comply with the requirements of the 2014 order, why does that matter? We raise this question because we see no reason why a court that issues what by all appearances is an interlocutory order in proceedings of the nature involved below cannot choose later not to require a party to comply with all aspects of that order. Indeed, the court's 2014 order itself was an amended and corrected version of a previous order. (See *Frantz v. Mallen* (1928) 204 Cal. 159 [court had the jurisdiction to change an

interlocutory order], cited approvingly in *Bank of America Nat. Trust & Sav. Assn. v. Superior Court* (1942) 20 Cal.2d 697, 702 [“trial court had complete power to . . . reconsider and change its ruling on demurrer, at any time before entry of judgment”] and *Parenti v. Lifeline Blood Bank* (1975) 49 Cal.App.3d 331, 334.) At worst, the court decided not to require Lohan to comply with all aspects of its 2014 order upon its review of the parties’ papers and arguments. And indeed, Boisvert argued that Lohan had not complied with the requirements of the 2014 order, just as he does in this appeal. The court’s order indicated it had considered these and Boisvert’s other arguments, and its order makes clear that it rejected them, meaning that it determined for whatever reason that they were no reason to deny Lohan’s 2017 motion. Boisvert does not meet his burden as appellant of establishing why the court’s ruling was in error under the circumstances. (*Lennane v. Franchise Tax Bd.*, *supra*, 51 Cal.App.4th at p. 1189.) Therefore, this claim is not a basis for reversal.

Second, Boisvert argues that, while California law does not require a collection agent such as Lohan to appear through counsel in our state’s appellate courts to represent DeGutz’s interests, in federal court Lohan is prohibited from doing so. Boisvert asserts that, although Lohan, if he “were to appear before this federal court it would be nominally on his own behalf,” nonetheless “the outcome of this proceeding might benefit DeGutz.” Therefore, Boisvert concludes, “Lohan cannot appear before this court because he is representing DeGutz’s interest in the judgment.”

We are a state appellate court, not a federal appellate court. Therefore, this argument lacks merit.

DISPOSITION

The court’s order appealed from is affirmed. Boisvert is ordered to pay Lohan’s costs of appeal.

STEWART, J.

We concur.

RICHMAN, Acting P.J.

MILLER, J.

DeGutz v. Boisvert (A152443)